

The Salisbury Planning Board held its regular meeting Tuesday, May 9, 2006, in the City Council Chamber of the Salisbury City Hall at 4 p.m. with the following being present and absent:

PRESENT: Nathan Chambers, Tommy Hairston, Lou Manning, Brian Miller, Sandy Reitz, Valarie Stewart, Albert Stout, Dr. Kelly Vance, Price Wagoner

ABSENT: Dr. Mark Beymer and Diane Young

STAFF: Janet Gapen, Dan Mikkelson, Preston Mitchell, Diana Moghrabi, Joe Morris and David Phillips

Chairman Brian Miller called the meeting to order and offered the invocation. The minutes of the April 25, 2006, meeting were approved as published. The Board approved some adjustment to the agenda.

NEW BUSINESS

A. Zoning Map Amendment

- (1) Z-05S-06, Luke Fisher, petitioner,** (Intersection of W. Innes Street and the Crescent Subdivision Entrance) Hogan's Valley Way
R-8 to RD-A-S
Acres: 13.97

Mr. Fisher requested that this rezoning be deferred indefinitely. The house design and site layout is an issue with the current residents in the Crescent neighborhood. He will meet with staff and neighbors to resolve the issue.

Sandy Reitz made a MOTION to defer Z-05S-06 indefinitely (not to a date certain). Lou Manning seconded the motion with all members voting AYE. (9-0)

B. Group Development

- (1) G-04-01, Salisbury Academy,** 2210 Jake Alexander Boulevard North
Tax Map 327, Parcel 127, Zoning R-8

Jennie Lins of Salisbury Academy submitted the application for the addition of an 864 square-foot modular classroom unit to be located at the rear of the existing facility at 2210 Jake Alexander Boulevard North. All zoning criteria have been met. The Technical Review Committee recommends approval of the application to the Planning Board as submitted.

David Phillips gave a staff presentation that included photos and site plans. The colors will blend with the current building. Plumbing for a restroom will not be necessary since there is one in near proximity.

Those speaking in favor of the improvements:

Jennie Lins of 7055 Highway 601 made herself available for questions.

Those speaking in opposition: None

Board Discussion

Lou Manning made a MOTION to approve G-04-01 as submitted. Albert Stout seconded the motion with all members voting AYE. (9-0)

(2) G-07-06, Maxon Furniture, Inc., 520 Grace Church Road
Tax map 477, Parcel 003, Zoning M-1

Mr. Edward J. Lucas, of Maxon Furniture, Inc. (part of the Oakwood Business Center) submitted a revision of a previously approved group development site plan. The changes include an addition of a 3,800 square-foot office building and a 10,500 square-foot manufacturing building to the existing 129,000 square-foot facility which is located at 520 Grace Church Road (There are two additions). All zoning criteria have been met. The technical Review Committee recommends approval of the application to the Planning Board as submitted.

Those speaking in favor of the improvements: None

Those speaking in opposition: None

Lou Manning made a MOTION to approve G-07-06 as submitted. Sandy Reitz seconded the motion with all members voting AYE. (9-0)

OLD BUSINESS

A. Subdivision

S-06-05, John Leatherman, 8.92-acre tract located off Rosemont Street and Dodd Street into seven commercial lots. Dan Mikkelsen presented a staff report.

This Board had made a conditional approval December of 2005. The applicant, Mr. Leatherman, appealed the conditions to City Council. City Council sent it to committee and the four voting members were not able to meet consensus on a decision for the appeal. They referred the matter back to the Planning Board.

This situation is unprecedented in Salisbury and difficult to address since the appellate body is requesting appeal decision assistance from the approving body. City Council can direct their appointed boards and commissions to provide direction and advice when considered necessary. The City Attorney concurs that Council has requested advice on the sufficiency of the substandard roadway for public acceptance; however, the City Attorney recommends that the Planning Board exercise their judgment on discussion of other Council committee recommendations and specific details or issues discussed by the City Council not clearly defined in the advice request to the Board. He also concurs with Richard Ducker; land-use attorney for the Institute of Government, that the City Council cannot solicit indiscriminate review of the previously approved preliminary plat or elements contained therein.

Dodd Street

City Council asked if the alternate street section is sufficient, and whether a 20-foot right-of-way (ROW) and 16 feet of pavement is sufficient for a public roadway.

Commercial Item	Standard	Proposed Alternate
Pavement	24'	16'
Curb & Gutter	30"	24"
Sidewalks	5'	none (relief already granted on one side)
ROW	50'	25.35' at Main Street 20.83' at back (road tapers)

Planning Board to evaluate “sufficiency” relative to vehicular accommodation, pedestrian accommodation, public use of right-of-way, and on whether this is a reasonable precedent for future decisions.

Vehicular Accommodation

Traffic Volume Estimate—80,000 square feet of general office = about 900 vehicles per day (vpd)

Comparison Streets:

Mitchell Avenue (6/05) – 730 vpd

Maupin Avenue (6/05) – 888 vpd

Idlewood Drive (10/05) – 1032 vpd

Pedestrian Accommodation

Eighty thousand square feet of general office space would generate 250–350 employees. Is it sufficient for them to walk in the road to Main Street? Dodd Street is 373' long. Public use of right-of-way (Standard shoulders exceed 10', while proposed shoulders vary from 2.7' wide to 0.4') includes utilities, traffic signs and streetlights. The existing right-of-way is not sufficient for standard street lighting; street lighting is not mandatory.

City Council has a one-year tactical goal to prepare and implement a *fiber to the home* business plan. *Fiber to the home* would be a City-maintained fiber network to every neighborhood and business center. Is it sufficient for the City to accept off-road service to this new business center if the City implements *fiber to the home*? Is it sufficient to accept shoulders less than 3' wide? Would this be a reasonable precedent for future decisions?

Comparisons—Developers held to standards:

Leatherman Property

Seven Commercial lots

900' road

Julian Road Business Park
Seven Commercial Lots
771' cul-de-sac

Grant Creek Commons
Five commercial lots
440' cul-de-sac

Town Creek Commons (Cedar St.)
Two commercial lots
200' cul-de-sac

A revised preliminary plat has been submitted by the petitioner and has not yet been through the technical review process (TRC). It is scheduled for the May 18, TRC meeting and the June 13, Planning Board meeting.

Upon the advice of the City Attorney, Planning Board will not handle the referral in a Quasi Judicial Manner. The chair opened the floor for public comments.

Public Comments

Mr. Jay Dees of the Ketner Law Office, 121 E Kerr Street thought that the advice that staff received from the Institute of Governments is correct. Quasi Judicial would be the way to discuss this matter, with sworn testimony, established facts, and to base your reasoning for the condition on those facts. The Planning Board is discussing a discretionary condition. This is an existing condition since 1970; the condition placed on the original plat is illegal because what is being required of the applicant is to make improvements on property that he does not own. You can only place conditions on the subdivision area itself. You cannot place authority for approval or denial on a third party that is not involved in these proceedings.

It is clear that vehicles can use Dodd Street. It is not a safety issue; it is wide enough for traffic, and it is a straight run without curves or hills. Mr. Dees objected to the photos staff used to demonstrate the width of streets.

The compromise being discussed is a recommendation from the City Council Committee. He asked that it be reviewed in that light from the minutes of that meeting. He asked for a recommendation to approve Dodd Street as it is, for it is sufficient for this particular development.

Mr. Glenn Ketner of the Ketner Law Office, 121 E Kerr Street, passed a handout to the Planning Board; staff and media did not receive a copy. Item number one was said to be John Leatherman's original preliminary plat which was approved by the Planning Board with conditions. Number two was the memorandum from Patrick Ritchie to Dan Mikkelsen that set forth the appeal of the conditions.

- Condition #1—that the proposed connection to South Main Street shall include improvements to Dodd Street to bring it up to current City street standards, except that a

40-foot (minimum) public right-of-way will be allowed with sidewalk on only one side of the street. This is the condition that is being appealed.

- Condition #2—A driveway permit shall be obtained from NCDOT for the proposed connection to South Main Street.

Item number three was minutes but which meeting was not identified.

Mr. Ketner did not agree that this discussion is about the sufficiency of Dodd Street. He mentioned that the street Mr. Ketner lives on does not meet current standards. South Lee Street, he stated, is 20 feet—the same as his plan. According to the Fire Chief, the alternate proposal does not cause any concern for emergency access to Dodd Street.

Patrick Ritchie received a revised site plan April 21. Rosemont residents had the opportunity to speak to Mr. Leatherman after the last Planning Board meeting and seemed to like the revised plat. Mr. Ketner objected to the scheduling of the TRC and felt the revised plat should have come before Planning Board for this meeting. He believed that Planning Board had the authority to act at this meeting. The new plan relieves the Rosemont residents of any concerns about access to their neighborhood.

Mr. Brian Miller said Mr. Ketner at one point wanted Planning Board to handle this issue in a Quasi Judicial manner which was found to cause a delay; at another point Mr. Ketner suggested Planning Board should handle the matter today.

Mr. Rodney Queen of 101 Polo Drive would have liked to have had the opportunity to discuss the revised site plan at this meeting. He felt this is the solution for the Rosemont residents. Any presentation could show bias to any particular point of view. If everything fit the process, we would not need a Planning Board. Planning Board had opportunities to grant relief with previous developments in order to build Salisbury and to support developers, and they did so. If Planning Board turned down all developments that needed relief from standards, there would be a lot less development in Salisbury. Mr. Leatherman has an opportunity to develop this land.

Mr. Queen did not believe that Dodd Street was truly a safety issue. It is not a through street; traffic on Dodd Street will have these businesses as their destination. It is not as pedestrian oriented as other streets. The only one the street is hurting is the developer.

Mr. John Leatherman of 706 B Jake Alexander Boulevard West read a letter from Dan Norman of Ramsay, Burgin, Smith Architects. The letter stated that the “solution shown” has the potential to become a real asset to the community of Salisbury. The design’s safety impact relating to the Dodd Street connection to South Main Street is no different than any access to South Main Street. His development would not access any residential property. The section Mr. Leatherman controls would have a 50-foot right-of-way, curb and gutter, and sidewalks to meet City standards. He, too, had hoped to discuss the revised site plan.

Mr. Miller stated that this referral is a result of an appeal made by Mr. Leatherman. If that appeal were withdrawn, the next thing to be considered would be the revised plat when it came through the process. He asked if Mr. Leatherman had considered that as an option. Mr. Ketner answered

for Mr. Leatherman that one of the conditions is that upon approval of the new plat the other plat goes away. He did not want to withdraw an approved site plan that would be good for two years in advance of approving the revised plat.

Mr. Charles Parks whose business address is 531 E Innes Street stated that he owns property adjacent to Dodd Street. He has quite a bit of investment in the entire area (2.7 acres). He summarized and offered his prospective. He understood that Planning Board is trying to uphold standards while being as flexible as possible and consistent with those standards. Mr. Leatherman wishes to develop the property and wants to maximize his return on his capital. People of Rosemont Street do not want anything to do with any of this. The City wants revenues from developed property.

It appears that Dodd Street was paved by the family which Mr. Parks bought the property from and was originally part of the property he recently purchased. He does think that safety is an issue regarding Dodd Street. Planning Board has compromised the standards by attaching the condition. Everyone seems to be in agreement about Rosemont Street.

- Mr. Parks is offering to purchase the estate if Mr. Leatherman is unable to develop and install the 50 feet.
- He would allow Mr. Leatherman to purchase the necessary land for less than Mr. Parks thinks the property is worth and more than Mr. Leatherman wants to pay.
- He would donate necessary property for the 40-foot requirement to the City because he would like help from the City in obtaining sewer service which the property does not currently have.

Mari Anne Summey, of 611 "D" Avenue spoke in favor of opening Dodd Street as the only access to this property. She has many concerns about drainage and rainwater runoff into the neighborhood. They have experienced some flooding in the past. She would like to see a wooded buffer and to have any new development to take care its own runoff. Mr. David Phillips stated that the zoning requirement of B-1 adjacent to a residential use is a 15-foot buffer with complete visual screening. She included the fact that she would appreciate public notification of meetings.

Ada Smith has lived at 1922 Rosemont Street for over 16 years. It was very quiet when she moved there and she hopes that the neighborhood will be left the way it is. She is not in favor of sidewalk installation in their neighborhood because they would lose half of their yards.

Raymond Brooks of 1925 Rosemont Street stated that he is in favor of the revised plat and that he would like to receive public notifications.

Brian Miller closed public comment and offered four suggestions for the Board to consider as outcomes.

- To uphold the earlier Planning Board decision.
- To amend the conditions to allow the 20-foot right-of-way or the proposed compromise.
- To table discussion on sufficiency to allow the amended plat to come through TRC.
- To come to no decision and to ask City Council to clarify their referral.

Planning Board entered a discussion on the matter. There was a MOTION and a second to go past 6:00 p.m. (8-1)

Several members felt they needed more information and further discussion to make a valid decision. Brian Miller explained that no information is being withheld and that the revised plat was going through the normal process. Mr. Mikkelson explained what is currently Dodd Street is not what would be there under any scenario. Dodd Street is not on the City system; it is a private improvement. Nathan Chambers would like to allow time for Mr. Parks's offers to be considered.

Dr. Kelly Vance said that she keeps hearing the property is "not his" and the Planning Board is asking Mr. Leatherman to do things to property that does not belong to him; however, if that is the argument, then none of the recommendations should be followed through and he cannot use the property at all. Either he can improve the property and use it to our standards, or it cannot be used because it does not belong to him.

Mr. Mikkelson stated that the developer has an option of property that is one lot. He is asking to subdivide it into seven lots and the City standards say that if you want the benefit of subdividing you need to make certain improvements. In order to get the benefit of the subdivision and the higher density, they have to find a way to get sanitary sewer to that property, and they do so by making improvements off-site. They acquire an easement and they bring sanitary sewer to their property. Dr. Vance believed that the Board was distracted by the issue of ownership.

Dr. Vance was also concerned about the sufficiency of the new plan. She was very concerned about where pedestrians and cyclist are going to go; in this day and age of increasing gas prices and expanding waistlines you want to create an environment in our city that is conducive to alternate means of transportation. She was dismayed that anyone would suggest that the City revert back to outdated standards for our streets.

Valarie Stewart made a MOTION to table the City Council referral S-06-05 to have further dialog and review the new or revised plat. Tommy Hairston seconded the motion. AYE: Valarie Stewart, Nathan Chambers, Brian Miller, and Tommy Hairston. NAY: Price Wagoner, Sandy Reitz, Kelly Vance, Lou Manning, and Albert Stout. Motion failed (4-5)

Sandy Reitz made a MOTION to uphold the original Planning Board recommendation to City Council with the 40-foot wide street and sidewalk on one side. She does not think that 20 feet is sufficient; she would have preferred 50 feet and sidewalks on both sides. Lou Manning seconded the motion. AYE: Sandy Reitz, Lou Manning, Brian Miller, Kelly Vance, Price Wagoner. NAY: Albert Stout, Tommy Hairston, Nathan Chambers, and Valarie Stewart. The motion passed (5-4).

Dan Mikkelson asked for a summary of the opposition to the vote. Valarie Stewart stated that it appears that the appeal process did not work. Planning Board upheld a decision which the petitioner appealed to City Council. She felt that would have been alright if there had not been more to consider. She would like to have seen the property owners come to an agreement that would make the street sufficient. She promotes harmony. Ms. Stewart felt that it would have been better for City Council to make a decision rather than sending it back to the Planning Board.

Mr. Miller was concerned about the precedence this would set for future development. The appeal itself was the reason for this conversation. The revised plat meant that the petitioner could have withdrawn his appeal and gone forward with the revised plat.

COMMITTEES

- **Committee 1**, reviewing the proposed Sidewalk Prioritization Plan, convened their meetings on April 26 and May 3, 2006. Staff will map specific destination areas and determine “hot zones.”
- **Committee 2** (Albert Stout, chair; Valarie Stewart, Vice Chair, Mark Beymer and Kelly Vance) The US 70 Corridor.

The committee met Thursday, May 4, at 7 a.m. at the hospital cafeteria. Fresh input from the community is requested. The old study would be used to assist in developing thoughts and ideas. The community (stakeholders) needs to be involved in the process and fact-finding. A stakeholders meeting will be held before any new work can get underway. Staff is charged with scheduling the meeting and making necessary contacts or notifications.

- The subject of Courtesy Hearings will be discussed at the next meeting.

There being no further business to come before the Planning Board, the meeting was adjourned at 6:45 p.m.

Brian Miller, Chairman

Lou Manning, Vice Chairman

Secretary, Diana Moghrabi